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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 11, 1994

HAND DELIVER

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Dear Mr. Caton:

On behalf of Capital Cities/ABC, Inc., transmitted herewith for filing with the Commission are an original and five copies of its Comments in PP Docket No. 93-21.

If there are any questions in connection with the foregoing, please contact the undersigned.

Sincerely,

S Ant

Sam Antar

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Enclosures

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APR 1 1 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 26 of the Cable Television Consumer Protection and Competition Act of 1992	)	PP Docket No. 93-21
	)	
Inquiry Into Sports Programming Migration	)	

COMMENTS OF CAPITAL CITIES/ABC, INC.

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April 11, 1994

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Summary

In response to the Commission's request, we are furnishing, in Sections I and II of these Comments, additional information concerning ABC Television Network contracts for the broadcast of college football and professional sports games as well as ABC's pay-per-view plan for out-of-market college football games.

In Section III of the Comments, we present our views on how "preclusive contracts" should properly be analyzed under antitrust law principles and other relevant public interest factors. Based on this analysis, we do not believe there is any need or justification for further regulatory or legislative intervention into the very competitive sports television marketplace.

ABC's college football rights contracts plainly do not violate the antitrust laws or competition law principles. These contracts -- and in particular, the inventory of games and teams they aggregate, the selection opportunities and flexibility they provide to ABC, and their limited exclusivity provisions -- create significant efficiencies. Without such provisions, the colleges would have less attractive and less valuable rights to sell; and there would be fewer network telecasts, smaller network audiences, and less value for advertisers.

The contracts do not create or maintain market power in any market, nor do they reflect the existence or exercise of market power by ABC. There is intense competition among telecasters for viewers, advertisers and rights to televise college football and other sports events. This competition has been reflected in recent years in the breakup of the CFA, in changes among telecasters in rights to televise games, and in a general escalation of rights fees. In all relevant markets, market shares are too low, commercial relationships too ephemeral and competition too intense for any telecaster profitably to raise prices above competitive levels or otherwise to exercise market power.

In summary, ABC's contracts are a result of intense competition among schools and telecasters and they manifest the markets' judgment as to the most efficient means for televising college football games. Reliance on the existing, robust marketplace competition best serves overall the diverse and legitimate interests of the schools, telecasters, advertisers, and viewers.

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To: The Commission

COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. ("Capital Cities/ABC" or "Company") submits herewith its comments in response to the Further Notice of Inquiry in the above-entitled proceeding ("Further Notice"). The Commission issued the Further Notice in order to update its record on sports migration in preparation for its Final Report to Congress which is due July 1, 1994 pursuant to Section 26 of the Cable Act of 1992. These Comments reflect the Company's interests as the owner of the ABC Television Network and of television broadcast stations. The Company also owns a majority interest in ESPN, a national cable sports programming network. ESPN is filing separate comments in this proceeding.

The Further Notice specifically requests additional information concerning ABC Television Network contracts with college football conferences, concerning the ABC Television Network's pay-per-view ("PPV") plan for out-of-market college football games, and concerning the ABC Television Network's new contracts with the National Football League ("NFL") and Major League Baseball ("MLB"). The Further Notice also requests information to aid the Commission in making "a public interest determination as to whether `preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations'".[1]

Our Comments are organized into three sections. In the first section, on college football, we describe the ABC Television Network contracts with college football conferences and the Company's PPV plan for out-of-market college football games. The second section deals with professional sports contracts. In the third section, we put forth our views on how preclusive contracts should properly be analyzed under antitrust law principles and the other relevant public interest factors.

[1] Further Notice, at 31.

I. College Football

A. Contracts With College Football Conferences for ABC Television Network Broadcasts of College Football Games

The Commission has requested "more complete explanations" of the exclusivity provisions of ABC's current contracts with college football conferences including, in particular, the exact times of the ABC/CFA exclusive "windows."

ABC's contract with the CFA extends through the 1995 College Football season. As our initial comments indicated, the exclusivity provisions in ABC's current contract with the CFA are ordinary, procompetitive and lawful. These provisions give ABC certain limited exclusivity rights to televise the home games of CFA members generally in the Late Afternoon time period which in practice begins at 3:30 PM on Saturdays.[2] Outside that time period, any third party may televise CFA games, with certain start time restrictions designed to minimize overlap into the ABC Telecast Period.

The overlap provision which is relevant to local station telecasts restricts live telecasts on Saturday afternoons of games that begin after 12:10 PM local time (or

[2] The games are scheduled for a period of three and one-half hours, and virtually always conclude within that time period. The contract also gives ABC limited rights to televise some games in the early afternoon on a non-exclusive basis. Under limited circumstances, with the consent of other parties, ABC may telecast some games in prime time on Saturdays on an exclusive or non-exclusive basis.

12:40 PM local time, in the case of games involving members of the Southeastern Conference). Thus schools are free to telecast all games not televised by ABC whose start times are before 12:10 (or 12:40) PM.

The contract contains further limitations on ABC's exclusive window for telecasts of CFA games. The contract permits non-ABC telecasts at any time in the home towns of the participating schools as well as closed-circuit and pay-per-view telecasts, and national late afternoon cable telecasts. In addition, because the local time of the kickoff is controlling, West Coast games can be televised live in the East at mid-afternoon. A game beginning, for example, at noon in Los Angeles could be shown live at 3:00 in the afternoon in Washington, DC.

Similarly, ABC's contract with Pac 10/Big 10 provides that all home games of Pac 10 or Big 10 schools that are not televised by ABC may be televised by any telecaster (other than the CBS, NBC or Fox Networks) at any time other than during an exclusive 3 1/2 hour window during which ABC is televising a Pac 10/Big 10 game. Even during this window, however, such games may be televised under the following circumstances: (a) Any telecaster, including a broadcaster in the team's home market (other than the CBS, NBC or Fox Networks), may televise any game of a Pac 10 or Big 10 school that begins (i) on or after 6:15 PM Eastern Time, or on or before 12:30 PM Eastern Time, on Saturdays on which the ABC telecast begins at 3:30 PM Eastern Time or (ii) on or after 3:15 PM Eastern Time when ABC's telecast begins at 12:30 PM Eastern Time; (b) any home game of Pac 10 members that begins on or after 3:10 PM Pacific Time may be syndicated for live telecasts in multiple areas; and (c) home games of Pac 10 and Big 10 members may be televised by closed circuit television to the campuses and alumni clubs of the participating schools at any time.

As press reports and the Commission have noted, ABC's contract with the CFA will not be renewed or offered to other telecasters after its expiration in 1995. To the contrary, two conferences that are members of the CFA -- the SEC and the Big East -- have entered into agreements with CBS for the telecast of their games. Other individual college football conferences have entered into agreements with ABC for carriage of their games beginning in 1996.

ABC has reached agreements with the Atlantic Coast Conference (ACC) and the Big Eight[3] for broadcast of these conferences' home games starting with the 1996 college football season. While some of the details of the agreements have yet to be worked out, in general each agreement is exclusive as to other over-the-air television broadcast networks, that is, each conference and its members are

[3] The Big Eight Conference recently expanded to include Baylor University, Texas A&M University, Texas Tech University and University of Texas at Austin. These colleges will become members of the Big Eight commencing with the 1996 college football season.

prohibited from selling television rights to other networks. The primary ABC telecast period in each is the 3:30 - 7:00 PM period on Saturdays. Outside the telecast time period, any third party (other than an over-the-air television broadcast network) may televise these conferences' games, with certain start time restrictions for regional cable syndication (in the case of the Big Eight) and syndication and cable telecasts (in the case of the ACC).[4]

B. <u>Pay-Per-View (PPV)</u>

ABC's PPV experiment for the 1992 College Football Season was described at length in our initial comments filed in March 1993. This option was offered to viewers during the 1993 season, and ABC's current intention is to offer the plan for the 1994 College Football season as well.

There are no significant differences between the plan described in our initial comments and the option to be offered in 1994.[5] The fundamental principle remains the same: the regional game of greatest local appeal will be broadcast over-the-air in a particular area. Games are simultaneously broadcast over-the-air in the areas where they are most desirable, but are also offered as pay-per-view alternatives in other areas. The result is to increase program diversity

[4] On a limited number of dates, ABC has rights to telecast games in additional time periods.

[5] Showtime Event Television, which was involved in the 1992 plan only, has had no further participation in the arrangement. ESPN assumed the role of Showtime in 1993.

without diminishing the amount of over-the-air programming or undermining the value of the over-the-air broadcasts to network affiliates or advertisers. The plan was designed to explore additional revenue sources to strengthen the network's ability to continue to deliver outstanding college football programming to its broadcast audience, while at the same time offering additional program choices to viewers without a negative impact on station and network ratings.

While we have decided to offer the PPV option in 1994, we do not know at this point whether we will continue to do so in future seasons. Decisions will be made on a season-by-season basis.

II. Professional Sports

A. NFL and MLB

Since our initial Comments in this docket were filed in March 1993, ABC Sports has reached new agreements with (1) the National Football League (NFL) and (2) the Office of the Commissioner of Baseball (MLB) and NBC for network exhibition of professional sports programming. Many of the inquiries regarding the NFL and MLB agreements in paragraphs 19 and 22-24 of the Notice go beyond the terms of the ABC arrangements, focusing instead on the overall impact of these leagues' contracts with numerous broadcast and cable entities on the availability of games via broadcast television. Since these leagues control and act as individual clearinghouses for telecast exhibition rights, we will leave it to those entities to provide the information requested by the Commission.

B. National Hockey League ("NHL")

ABC has no current contract with the NHL for telecast of sports events. Pursuant to an agreement with the Company, however, ESPN has purchased time on the ABC Television Network for broadcast of a package of NHL regular season and playoff games on six Sunday afternoons from March 27 through May 1, 1994. The first three weeks consist of coverage of regular season games, and the following three weeks consist of coverage of Stanley Cup playoff games.

C. National Basketball Association

ABC has no current contract with the National Basketball Association (NBA) for telecast of sports events.

III. Public Policy and Antitrust Analysis of Preclusive Contracts

Paragraph 31 of the Further Notice seeks comment on various factors that would bear upon an analysis of "preclusive" contracts under the antitrust laws. Paragraph 11 invites comment more broadly on public interest analysis for which, the Further Notice says (para. 31), the Commission will "draw[] upon competition law principles." As we understand it, the Commission does not intend to determine whether in its view "specific contracts violate the antitrust laws" (paras.

10, 31).[6] Instead, as we understand it, the Commission intends to address whether "preclusive contracts" in general violate competition law principles.

Most contracts for the rights to televise sports events addressed by the Further Notice have certain basic characteristics: They involve the home games of more than one team, usually the members of leagues or conferences; they permit the telecaster to select to some extent from among the games of the participating teams; and they restrict to some extent the ability of other telecasters to televise games of the participating teams. All of these basic characteristics -- which can be called the aggregation, selection and exclusivity features of the contracts -- increase the efficiency and enhance the value of sports programming on television. The specific characteristics of any particular contract reflect the various interests of the parties and are the result of vigorous, healthy competition among teams (or television rights holders) and telecasters.

The sports television marketplace is intensely competitive. In our view, there is no need or justification for further regulatory or legislative intervention into this competitive marketplace. We set forth our views in greater

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[6] As we have previously explained, such an undertaking would go beyond the Commission's traditional role and would require a far more comprehensive and detailed factual and legal analysis than that called for by the Further Notice or, indeed, possible in the time available to the Commission. See Capital Cities/ABC, Inc., Petition for Clarification (July 30, 1993).

detail below, focusing as the Commission requested on college football.

A. The Parties

The major participants in the televising of college football games are found at three different, vertically related levels. First are the colleges, which own the rights to televise their games. The colleges sell television rights to the various telecasters. The telecasters, in turn, combine the rights they acquire with other production inputs (e.g., cameras and announcers) and distribution facilities (e.g., a television station or network) to produce a television program in order to generate a viewing audience that the telecaster "delivers" or "sells" to advertisers. The vast majority of telecasters' revenues come from advertising, and advertisers are thus the telecasters' principal customers.[7]

The colleges, telecasters and advertisers each have their own unique interests. The colleges want to receive revenues from selling rights to televise their games; all other things being equal, they would probably want to maximize those revenues. But the colleges also have other objectives: They seek national or at least regional television exposure (instead of just local exposure) because it enhances the prestige of the schools, aids their recruitment of students

[7] Cable programmers generally receive fees from local cable operators, but the principles described in text remain generally applicable to cable programmers as well as over-the-air television stations and broadcast networks.

and athletes, and helps maintain good alumni relations. Groups of colleges, like leagues and associations, generally also desire to allocate television exposures relatively equally among the group members; equitable allocation of television exposure helps spread the recruitment benefits of the television contracts and thus tends to maintain competitive balance among the teams and thereby preserve the value of their television rights over the long run.

The telecasters' interests are different. Their principal interest is to maximize the size and quality of the audience for their telecasts and, thus, the value of the product that they can sell to advertisers.[8] Accordingly, national and regional telecasters generally want to maximize the likelihood that they will be able to televise games of widespread interest to potential viewers; they thus want the opportunity to choose the most attractive games.

To help generate a large audience for their telecasts, national telecasters invest heavily in high-quality production and promotion of their football packages (e.g., CFA football or PAC 10/Big 10 football). Like all purchasers of

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[8] Size of the audience is obvious. Quality is less easily defined. It refers generally to the demographic characteristics (e.g., age, gender, education level) of the viewers. Different advertisers prefer audiences of different quality; an advertiser of lawn mowers, for example, might focus on a different "target audience" from that sought by an advertiser of detergent. Correspondingly, different telecasters typically seek to attract different types of audiences, depending on their particular programming strategies.

intangible or intellectual property rights, college football telecasters generally seek safeguards to prevent competitors from reaping the fruits of those investments or from otherwise diluting the value of their telecasts.

Advertisers buy time on college football telecasts principally in order to obtain access to the viewing audience for their advertising messages. Advertisers seek large audiences. In this sense, advertisers serve as a proxy for viewers: Telecasters seek to maximize the size and quality of the audience they can "deliver" to advertisers because advertisers will pay more for large audiences; in order to obtain large, high quality audiences, telecasters must produce attractive programming.[9]

B. Efficiencies

ABC's college football contracts (as well as the college football contracts of other telecasters) are a result

[9] Market prices for advertising on television sports events increase, both in absolute terms and in cost-per-viewer, as the number of viewers increases. In other words, advertisers prefer programs that generate large audiences. Thus, for example, an advertiser would generally be willing to pay more for a 30-second spot on a program with 20 million viewers than it would be willing to pay for two 30-second spots, one on each of two programs with 10 million viewers. There are many reasons for this, the most important of which appears to be that the larger audience provides the advertiser with more unduplicated viewers. In the example above, one advertisement on the widely viewed program would reach 20 million different viewers; but the two different spots on the less widely viewed programs might reach a total of only 18 million different viewers if 2 million viewers watch both programs. For this reason, output cannot properly be measured by the number of games (programs) televised or even by the total number of viewers for all games in aggregate.

of intense competition among telecasters. ABC obtained its contracts by, in effect, outbidding other national, regional and local telecasters. A league or association that chooses to sell television rights to a national telecaster like ABC could choose, instead, to sell those rights to another national telecaster (e.g., a broadcast network like CBS or a cable programmer like TNT), a regional telecaster or sports network, or a combination of local telecasters in the various communities in which the member schools are located. The league or association chooses to sell those rights to ABC only if ABC offers it the most attractive package of benefits -- principally, rights fees; high quality, national or regional telecasts; and equitable apportionment of those telecasts among its member schools.

ABC's college football contracts create significant efficiencies that increase the size of ABC's viewing audience and, thus, the value of ABC's telecasts to its customers, the advertisers. Without these efficiencies, ABC would obtain fewer revenues from the sale of advertising time and would thus not be able to invest as much in bidding for college football telecast rights or producing high-quality telecasts.

ABC's college football contracts enable it to increase the size of the audiences it can deliver to advertisers in several ways:

-- The aggregation and selection features of the contracts enable ABC efficiently to put together a season-long college football package that is most likely to include games that will be of widespread interest and will thus attract a large audience. The contracts achieve these objectives by making a large portfolio of games available to ABC over the life of the contracts and by giving ABC options to select from that portfolio those games that seem most attractive as the season progresses. By permitting ABC to select games as the season unfolds, the contracts enable ABC to assure viewers and advertisers that they will not be shown games selected months earlier, many of which would inevitably prove not to be as important or interesting as might have been expected before the season began.

-- ABC's college football telecasts include so-called "time-period exclusivity" provisions that restrict telecasts of games of leagues or associations with which ABC has contracted at the same time as ABC's telecasts.[10] These provisions, which are common in the industry, help ensure that ABC's audience will not be diluted by simultaneous telecasts of other games of the participating league or association, reduce the likelihood that viewers will switch away during commercials, and encourage ABC to promote its telecasts and the goodwill of the contracting league or association by

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[10] These provisions do not prohibit others from televising games of the members of those leagues or associations. To the contrary, ABC's contracts permit the live, nationwide televising on Saturday afternoons of every game that is not televised by ABC. See letter from Charlene Vanlier to Donna R. Searcy, in P.P. Docket No. 93-21 (May 20, 1993).

safeguarding its promotion from appropriation by free-riding competitors. In all these ways, the "time-period" exclusivity provisions serve to increase the size of ABC's audiences and thus the value of its telecasts to advertisers.

ABC's college football contracts have other efficiency benefits as well:

-- The "network exclusivity" provisions of ABC's contracts restrict the ability of the other major over-the-air networks to televise games of the leagues or associations with which ABC has contracted. Among other things, these provisions help ABC develop goodwill and loyalty among affiliates, advertisers, and viewers and thereby encourage ABC to invest in and promote its college football telecasts without fear that the benefits of those efforts will be appropriated by free-riding competitors.

-- The contracts also enable ABC to differentiate its programming from that of other telecasters and thereby foster program diversity. Other telecasters do not shut down or reduce their programming hours because of ABC's contracts; instead, they offer different programming -- either football games of other schools or non-football programming. Such differentiation is generally recognized as a legitimate, procompetitive benefit of such contracts like ABC's college football contracts.

C. Markets and Market Power

Because ABC's college football contracts -- and, in particular, their aggregation, selection and exclusivity provisions -- create significant efficiencies, they would give rise to antitrust concerns only if, among other things, they created or maintained market power in some economically meaningful market.[11] Absent proof of such market power, the contracts can be presumed to serve legitimate, efficiency-enhancing purposes and to manifest the markets' judgment as to the most efficient allocation of college football television rights.[12] Indeed, while several courts have upheld similar contracts in the television and print media businesses, no court has ever found such contracts to violate the antitrust laws.[13]

There are relevant markets at two different levels -- the downstream advertising markets in which telecasters sell advertising time, and the upstream television rights markets in which colleges sell television rights to telecasters.

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[11] See, e.g., VIII P. Areeda, Antitrust Law 1653 (1989) and cases cited.

[12] See generally, Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 5299, 5310 64 (1988) ("Syndex Order"), on recon., 4 FCC Rcd 2711 (1989) ("Syndex Recon"), aff'd nom., United Video, Inc. v. FCC, 890 F.2d 1173 (D.C. Cir. 1989) ("As long as there is reasonable competition among suppliers and distributors, exclusivity is a competitive tool that fosters the efficient channelling of programming to its most appropriate outlets, thereby maximizing the extent and diversity of programming available to viewers.").

[13] See, e.g., Ralph C. Wilson Indus. v. Chronicle Broadcasting Co., 794 F.2d 1359 (9th Cir. 1986) (exclusive rights to television programs); Woodbury Daily Times Co. v. Los Angeles Times-Washington Post News Serv., 616 F. Supp. 502, 510 (D.N.J. 1985), aff'd mem., 791 F.2d 924 (3d Cir. 1986).

1. Advertising Markets

ABC obtains the bulk of its revenues from selling advertising. Thus, one needs to examine the advertising markets in order to determine whether ABC or other telecasters have market power. Cf., Walt-West Enterprises, Inc. v. Gannett Co., Inc., 695 F.2d 1050, 1061 (7th Cir. 1982).[14]

Defining the parameters of the relevant product and geographic markets is an empirical question. In 1991, in the FTC proceeding regarding ABC's contract with the CFA, ABC gathered statistical and other data bearing on the market definition and market power issues from dozens of industry participants. However, the data gathering and analysis were not complete when the proceeding was dismissed for lack of jurisdiction,[15] and the data are in any event subject to a protective order that prohibits their disclosure. Moreover, rapid changes in the television and communications industry undoubtedly mean that the markets have become even larger and more competitive since 1991.

[14] Focusing on advertising markets does not mean that the interests of viewers are ignored. To the contrary, advertisers want their advertisements to reach as many viewers as possible, so ABC and other telecasters (including cable programmers) have an incentive to offer the most attractive programming possible in an effort to attract both viewers and advertisers.

[15] The Administrative Law Judge's order dismissing the proceedings is presently on appeal to the full Commission. In the Matter of College Football Ass'n and Capital Cities/ABC, Inc., FTC Dkt. No. 9242.

Advertisers that buy time on college football telecasts have a multitude of ways to get their message to prospective buyers of their products. Thus, while precise delineation of markets for antitrust purposes requires detailed factual analysis, we believe that the product market in which advertising on which college football telecasts is sold includes advertising on all sports programs and on many other types of programs; that the product market includes advertising on all television media (including over-the-air networks, syndicated and regional telecasts and cable programming) and perhaps on print media as well; and that the geographic market is nationwide.

Neither ABC nor, we believe, any other telecaster has market power in any such advertising market. Market shares are too low, commercial relationships too ephemeral and competition too intense for any telecaster profitably to raise prices above competitive levels or otherwise to exercise market power in the sale of advertising on sports events. ABC's college football contracts, therefore, should raise no serious antitrust concerns.

2. Television Rights Markets

It seems clear that ABC does not have monopsony power in the upstream markets in which television rights are sold by colleges to telecasters. There is intense competition among telecasters for rights to televise college football and other sports events. This competition has been reflected in recent years in the breakup of the CFA and in changes among telecasters in rights to televise college football games of the members of the Southeast Conference, the Big East Conference and perhaps others; the NFL; Major League Baseball; the Winter and Summer Olympics; and other sports events. Intense competition has resulted also in a general escalation of rights fees.

Nor does it seem likely that any existing league or association of teams has market power as a seller of television rights. The demand for television rights is, of course, largely derived from the advertising markets described above. One would therefore not expect suppliers of inputs into the advertising markets to have market power, when no telecaster is able to exercise market power in the advertising markets even if it were able to buy the bulk of the rights of any one league or association.[16] The enormous increase in

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[16] This is not to say that the lack of market power by ABC or other telecasters in the advertising markets precludes the possibility that a rights holder or group of rights holders could have market power in an upstream market. ABC is without market power in any advertising market because, among other things, advertisers are not constrained by the time at which telecasts are shown; an advertiser that can reach an audience of sufficient size or quality on Sunday or Thursday or Friday will readily consider those audiences to be good alternatives to a similar audience that it might reach through a telecast on Saturday afternoon. A telecaster's needs are different; it needs programming, for example, on Saturday afternoon, and an event on Thursday night might not be a good substitute for a live telecast on Saturday afternoon. Although it is thus possible that rights markets could properly be defined more narrowly than advertising markets, we do not believe that any college football league or association has market power in any television rights market.

recent years in the number of sports events and similar programming available to telecasters make it very unlikely that one could properly define narrow product markets in the sale of television rights or conclude that any one league or association has market power in any such market.[17]

D. Policy Implications

ABC's college football television rights contracts plainly do not violate the antitrust laws or competition law principles. Those contracts -- and, in particular, the inventory of games and teams they aggregate, the selection opportunities and flexibility they provide to ABC, and their limited exclusivity provisions -- create significant efficiencies. The contracts do not create or maintain market power in any market, nor do they reflect the existence or

[17] In NCAA v. Board of Regents of Univ. of Oklahoma, 468 U.S. 85 (1984), on the basis of a record assembled in 1982, the Supreme Court affirmed the conclusion of the District Court that the sale of rights to televise college football games constituted a relevant product market and that the NCAA, which controlled all of those rights, had market power. 468 U.S. at 111-112. But no one league or association today controls even a majority of the rights to televise college football games. Moreover, the industry has changed enormously since 1982. Indeed, in 1986, only four years after the NCAA trial, the same District Court judge that decided the NCAA case held that major changes in the sports and television industries gave rise to factual issues that precluded summary judgment that rights to televise college football remained a relevant market. Association of Indep. Television Stations v. College Football Ass'n., 637 F. Supp. 1289, 1300-02 (W.D. Okla. 1986). The changes that the court identified -- increases in the numbers of households receiving cable, cable programmers and independent television stations and in the amount of sports and other programming on television that attracts audiences similar to the audiences attracted by college football -- have accelerated in the eight years since 1986.